

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ATARI, INC.,
a Delaware corporation,

and

MIDWAY MFG. CO.,
an Illinois corporation,

Plaintiffs,

vs.

NORTH AMERICAN PHILIPS
CONSUMER ELECTRONICS CORP.,
a Tennessee corporation,
PARK TELEVISION d/b/a
PARK MAGNAVOX HOME
ENTERTAINMENT CENTER,
an Illinois partnership,

and

ED AVERETT, an individual,

Defendants.

FILED

MAR 11 1983

H. Stuart Cunningham, Clerk
United States District Court

Civil Action No. 81 C 6434

(Hon. George N. Leighton)

RECEIVED

MAR 14 1983

NOTICE OF MOTION


TO: THEODORE W. ANDERSON, Esq.
GREGORY B. BEGGS, Esq.
JAMES T. WILLIAMS, Esq.
Neuman, Williams,
Anderson & Olson
Room 2000
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Chicago, Illinois 60602

ERIC C. COHEN, Esq.
A. SIDNEY KATZ, Esq.
DONALD L. WELSH, Esq.
Welsh & Katz
135 South LaSalle Street
Suite 1625
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PLEASE TAKE NOTICE that on Thursday, March 10, 1983, at 9:30 a.m., or as soon thereafter as counsel may be heard, we shall appear before the Honorable George N. Leighton in the Courtroom usually occupied by him in the United States District Courthouse at 219 S. Dearborn Street, Chicago, Illinois, and present the attached Application for Issuance of a Letter Rogatory for the Taking of Testimony in the Netherlands.

DATED: March 8, 1983



Daniel W. Vitum, Jr.
Robert G. Krupka
David E. Springer
Alexander F. MacKinnon

KIRKLAND & ELLIS
200 East Randolph Drive
Chicago, Illinois 60601
(312) 861-2000

Counsel for Plaintiff, ATARI, INC.

IN THE UNITED STATES DISTRICT COURT
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APPLICATION FOR ISSUANCE OF A LETTER ROGATORY
FOR THE TAKING OF TESTIMONY IN THE NETHERLANDS

Plaintiff, Atari, Inc., respectfully moves this Court, pursuant to Rule 28(b) of the Federal Rules of Civil Procedure, to order the Clerk of the Court to issue the attached letter rogatory to Mr. Dr. M.P.J.A. Cremers, President of the District Court of Hertogenbosch, Spinhuiswal #2, 2511JG, 's-Hertogenbosch, Netherlands, requesting that he cause Mr. Joop De Graaf to be examined as a witness under oath.

In support of this motion, plaintiffs state:

1. Joop De Graaf is an employee of N.V. Philips, the ultimate corporate parent of defendant, North American Philips Consumer Electronics Corporation ("North American Philips"). Mr. De Graaf is employed at N.V. Philips' operation in Eindhoven the Netherlands."

2. On March 5, 1982, in accordance with the March 2, 1982 opinion and order of the United States Court of Appeals for the Seventh Circuit, this Court entered an injunction prohibiting North American and its employees, among others from ". . . distributing . . . selling, or offering for sale a video game cartridge known as 'K.C. Munchkin,' or in any other manner violating plaintiffs' exclusive rights under the copyright in the Pac-Man audiovisual work pending final disposition" of appeal. (Exhibit A, attached). The injunction became effective March 16, 1982.

3. On April 4, 1982, North American Philips sent a telex to Joop De Graaf at N.V. Philips offering to sell it more than 53,000 "K.C. Munchkin" integrated circuits. A copy of this telex is attached as Exhibit B.

4. North American's telex offer was in direct violation of this Court's March 5, 1982 injunction. This oral examination is necessary to determine if purchases were made or other offers received for the "K.C. Munchkin" integrated circuit in violation of the injunction. If such purchases were made, an oral examination is necessary to determine what happened to the "K.C. Munchkin" circuits that were purchased. Moreover, the oral examination is necessary to determine the scope of the injury to Atari and Midway stemming from such purchases.

5. Federal Rule of Civil Procedure 28(b) authorizes the Court to issue a letter rogatory to the proper foreign court in order to compel testimony in a domestic proceeding. The rule provides in pertinent part:

(b) In Foreign Countries. In a foreign country depositions may be taken . . . (3) pursuant to a letter rogatory. A commission or a letter rogatory shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases.

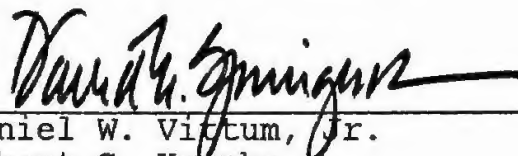
6. This Court has express statutory and inherent power to issue a letter rogatory requesting the oral testimony of Joop De Graaf. United States v. Reagan, 453 F.2d 165, 173 (6th Cir. 1971) ("This court, like all courts of the United States, has inherent power to issue letters Rogatory."). The testimony of Mr. Joop DeGraaf is material to this litigation since it will detail whether defendants were in direct violation of this Court's injunction by selling the infringing K.C. Munchkin circuit. See B & L Drilling Electronics v. Totco, 87 F.R.D. 543, 545 (W.D.Okl. 1978) (foreign witness was material to issues in lawsuits -- letter rogatory issued).

Wherefore, plaintiffs respectfully request this Court to order the Clerk of Court to issue the attached letter rogatory to Mr. Dr. M.P.J.A. Cremers, President of the District Court of 's-Hertogenbosch, Netherlands, requesting that he cause Mr. Joop De Graaf to be examined as a witness under oath.

A translation of the letter Rogatory into the Dutch language
will be provided to the Clerk.

DATED: March 8, 1983

Respectfully submitted,



Daniel W. Vittum, Jr.

Robert G. Krupka

David E. Springer

Alexander F. MacKinnon

KIRKLAND & ELLIS
200 East Randolph Drive
Chicago, Illinois 60601
(312) 861-2000

Attorneys for Plaintiff,
ATARI, INC.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ATARI, INC., a Delaware
Corporation, and MIDWAY MFG.
CO., an Illinois Corporation,

Plaintiffs,

v.

NORTH AMERICAN PHILIPS
CONSUMER ELECTRONICS CORP.,
a Tennessee Corporation, PARK
TELEVISION d/b/a PARK
MAGNAVOX HOME ENTERTAINMENT
CENTER, an Illinois
partnership,

and

ED AVERETT, an individual,

Defendants.

Civil Action No. 81 C 6434

(Hon. George M. Leighton)

REQUEST FOR INTERNATIONAL
JUDICIAL ASSISTANCE

To: Mr. Dr. M.P.J.A. Cremers, President of 's-Hertogenbosch
District Court Netherlands:

The United States District Court for the Northern
District of Illinois presents its compliments to the District
Court in 's-Hertogenbosch, Netherlands and requests its assis-
tance in connection with the matter described herein. There is
currently pending before this Court a civil lawsuit captioned
Atari, Inc., et al. v. North American Philips Consumer Elec-
tronics Corp., et al., in which the plaintiffs allege that
defendants have violated plaintiffs' copyright in the "Pac-Man"
video game by producing and selling a video game called "K.C.
Munchkin." Certified copies of the Complaint in this case are
attached hereto.

1. The complaint in this action seeks a permanent injunction and damages for defendants' infringement of plaintiffs' copyright in the "Pac-Man" video game. The plaintiffs allege that defendants' "K.C. Munchkin" video game infringes their "Pac-Man" copyright. Pursuant to a decision by the United States Court of Appeals for the Seventh Circuit, of March 2, 1982, this Court entered a preliminary injunction on March 5, 1982 barring defendants from "advertising, distributing, displaying, performing, selling, or offering for sale a video game cartridge known as 'K.C. Munchkin,' or in any other manner violating plaintiffs' exclusive rights under the copyright in the Pac-Man audiovisual work" This injunction became effective on March 16, 1982.

2. It has been represented to this Court that it is necessary for the purposes of justice and for the due determination of matters in dispute between the parties that Mr. Joop De Graaf, said to be residing in the Netherlands should be examined as a witness under oath. Mr. Joop De Graaf is an employee of N.V. Philips in Eindhoven, Netherlands.

3. Plaintiffs inform this Court that Mr. Joop De Graaf, while employed at Philips, received the attached telex from the defendant North American Philips Corporation.

4. The undersigned, George M. Leighton, United States District Judge for the Northern District of Illinois, respectfully requests that you cause the said witness to be summoned to attend, at such time and place as you shall appoint,

before you or such other person as according to the procedure of your Court is competent to preside over the examination of witnesses, and that you permit Mr. Joop De Graaf to be examined orally, under oath, by counsel to the parties in the action pending before this Court. Alternatively, it is requested that you cause Mr. Joop De Graaf to appear and to answer under oath the written questions and cross-questions and to permit counsel for the parties, in the exercise of your discretion, to participate by way of asking supplementary questions after you have completed the examination-in-chief. It is further requested that advance notice of the proceeding be given to the American Embassy in the Netherlands so that counsel for the parties may, in the exercise of your discretion, attend. I respectfully request that the proceeding be scheduled on or about April 12, 1983.

5. I further respectfully request that you cause the verbatim testimony of said witness to be reduced to writing and that you cause the record of the proceedings to be authenticated by the seal of your Court or in such other way as is in accordance with your procedure.

6. The Courts of the United States are authorized by statute, Section 1782, Title 28, United States Code, to extend similar assistance to the Tribunals of the Netherlands.

7. The United States District Court for the Northern District of Illinois is prepared to reimburse your Court for all costs incurred in executing the instant request and extends to the judicial authorities of the Netherlands the assurances of its highest consideration.

Hon. George N. Leighton
United States District Judge

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MIDWAY MFG. CO., an)
Illinois corporation,)
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No. 81 C 6434

NORTH AMERICAN PHILIPS)
CONSUMER ELECTRONICS)
CORP., a Tennessee)
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TELEVISION d/b/a)
PARK MAGNAVOX HOME)
ENTERTAINMENT CENTER,)
an Illinois partnership,)
Defendants.)

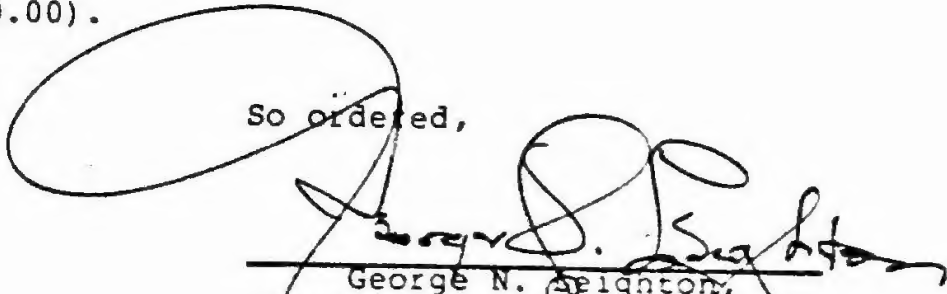
Before the Honorable
George N. Leighton,
United States District Judge

Order for Injunction Pending
Final Disposition of Appeal

In accordance with the Opinion and Order, each dated March 2, 1982, of the United States Court of Appeals for the Seventh Circuit in Appeal No. 81-2920 in this matter (copies of which are attached hereto), defendants, North American Philips Consumer Electronics Corp. (North American), and Park Television, d/b/a Park Magnavox Home Entertainment Center (Park), and all of their respective officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the order by per-

sonal service or otherwise, are hereby enjoined and restrained from advertising, distributing, displaying, performing, selling, or offering for sale a video game cartridge known as "K. C. Munchkin", or in any other manner violating plaintiffs' exclusive rights under the copyright in the Pac-Man audiovisual work pending final disposition of Appeal No. 81-2920. This injunction shall be supervised by this court in accordance with the order of the United States Court of Appeals for the Seventh Circuit. This order shall be effective upon the filing with the Clerk of the United States District Court for the Northern District of Illinois by plaintiffs of a bond in the amount of One Hundred Thousand Dollars (\$100,000.00).

So ordered,


George N. Seignton,
United States District Judge

Dated: March 5, 1982

copies to:

C. Evans

M. Stamps

L. Schuman

EI
CEG060
NL0EVPU
972

000031

4/16/82
MSG NO. CEG060

TO: PHILIPS EINDHOVEN

ATTN: MR. JOOP DE GRAAF
BLDG 0A3

WE HAVE THE FOLLOWING QTYS OF OUR ROM NO. 612307-6 ACCOUNTED FOR:

25,260 PCS OF FINISHED DEVICES AT VENDORS
28,530 PCS OF PARTIAL FAB DEVICES AT VENDORS

THESE ARE FOR THE ODYSSEY GAME "K. C. MUNCHKIN." WOULD YOU PLS CHECK TO SEE IF PHILIPS EUROPE WOULD BE WILLING TO PURCHASE THESE OR ANY PART OF THESE QTYS FROM US.

TKS AND RGDS.

H. MCDOWELL

NAPCEC KNOXVILLE TENN

*

Time: 15:05 04/16/82 EST

Connect Time : 154 seconds

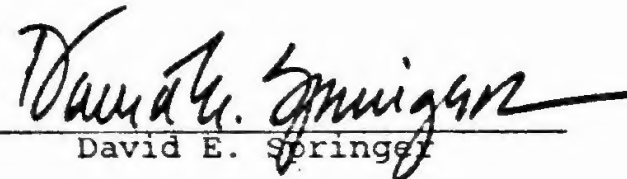
CONFIDENTIAL

CERTIFICATE OF SERVICE

I, DAVID E. SPRINGER, one of the attorneys for the plaintiff, Atari, Inc., hereby certify that on March 8, 1983, I caused a copy of Plaintiff Atari, Inc.'s Application for Issuance of a Letter Rogatory for the Taking of Testimony in The Netherlands, to be served on the following:

Theodore W. Anderson
Gregory B. Beggs
James T. Williams
Neuman, Williams, Anderson
& Olson
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David E. Springer